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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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CC Docket No. 92-134

In the Matter of )

Price Cap Performance Review )  
for AT&T )

TO THE COMMISSION:

**REPLY COMMENTS**

**OF**

**WILTEL, INC.**

WilTel hereby respectfully submits its Reply Comments in response to the Commission's Notice of Inquiry released July 17, 1992<sup>1</sup> in the above-captioned proceeding.

**I. INTRODUCTION**

WilTel Inc. operates the fourth largest fiber optic network in the United States. It serves as a key source of transmission services for second and third tier carriers, and provides a full spectrum of interexchange services to end users. WilTel's position as a direct competitor of AT&T and as a primary service provider to competitive interexchange carriers ("IXCs") provides the basis for WilTel's concerns in this docket.

The initial comments of other competitive IXCs, primarily MCI Telecommunications Corporation ("MCI") and Sprint Communications

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<sup>1</sup>Price Cap Performance Review, CC Docket 92-134, Notice of Inquiry ("NOI"), released July 17, 1992.

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Company LP ("Sprint"), highlighted several areas of specific interest for WilTel and its customers. These Reply Comments address two central concerns. First, AT&T has retained its dominant status in the IXC market and continued safeguards are required if the beneficial impacts of interexchange competition are to be realized in the future.<sup>2</sup> Moreover, price caps have not unduly reduced AT&T's pricing flexibility as witnessed by the stabilization of AT&T's market share and the fact that AT&T has not set its business service rates at the maximum or minimum levels allowed.<sup>3</sup>

Second, WilTel is concerned that the FCC might incorrectly conclude that the post-divestiture improvement in IXC market performance is due to price caps. Coincident with the initiation of price caps, changes in a number of other factors significantly altered the interexchange marketplace. Most importantly, the expanded level of competition and reductions in access charges have induced both service improvements and price reductions for IXC customers. WilTel shares MCI's concern that reductions in interexchange prices, which are due primarily to market entry and access charge reductions, will be improperly used as evidence that similarly decreased oversight is warranted in the local exchange carrier (LEC) access market.<sup>4</sup> As WilTel and others have expressed in CC Docket 91-213, LEC access ratemaking under price caps has

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<sup>2</sup>MCI Comments ("MCI") at 8.

<sup>3</sup>MCI at 2; NOI ¶ 17.

<sup>4</sup>MCI at 6-7.

been an impediment to expanded competition in the IXC market.<sup>5</sup> Moreover, the LECs' ability to discriminate under price caps threatens the viability of effective interexchange competition.<sup>6</sup>

## II. AT&T RETAINS ITS DOMINANT POSITION DESPITE PRICE CAP REGULATION

Despite competitive entry during the 1980s, AT&T retains its dominant position in the interexchange market. AT&T's market share has stabilized and recently began to increase, its earnings have been above AT&T's average,<sup>7</sup> and new entry of facilities-based carriers has all but ceased. Several regulatory factors have contributed to AT&T's retention of market dominance. Relaxed regulation, including price caps and customized tariffs (e.g. Tariff 12 and contract tariffs) have given AT&T significant latitude in pricing nearly all of its services. Pressure from market entrants has forced AT&T to cut its costs, expand and improve its levels of service, and reduce its prices. Finally, AT&T derives a significant advantage due to its status as an incumbent monopolist with a ubiquitous network.

Price caps can be credited with limiting prices only if another price level would have resulted in the absence of the caps.

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<sup>5</sup>MCI at 4-7 (discussing the rate structure of access charges and its impact on benefitting competition in the IXC market).

<sup>6</sup>See WilTel's Petition to Reject or Suspend and Investigate in BellSouth's Transmittal No. 53 (August 17, 1992). BellSouth sought revision of local channel rate structure.

<sup>7</sup>NOI ¶ 10.

However, as the NOI notes, AT&T has never sought rates exceeding the caps and has been allowed to lower rates below the caps in every instance in which such rate reductions were requested.<sup>8</sup> Hence, as noted by MCI, it is competitive pressure and reduced access charges rather than regulatory restraint which have resulted in reduced rates and consumer benefits.

### III. COMPETITION IS RESPONSIBLE FOR IXC MARKET IMPROVEMENT

WilTel disagrees with the Commission's contention that price cap regulation is responsible for "lower rates, innovative services, and improved efficiency."<sup>9</sup> In fact, each of these results can be directly traced to the presence of competitors in the market (along with reduced access charges which would have resulted in lower rates even under rate-of-return regulation).

In addition to lower rates and improved efficiency induced by competition, the presence of numerous resellers has served to limit AT&T's ability to price discriminate. Price discrimination is not restricted by price caps because they limit overall rate levels rather than the structure of rates.

However, IXC competition is not yet pervasive across all market segments.<sup>10</sup> Even if regulation is relaxed in certain sectors subject to effective competition, adequate protection oversight should be provided where competition or resale is

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<sup>8</sup>NOI ¶ 6.

<sup>9</sup>NOI ¶ 1.

<sup>10</sup>Sprint Comments ("Sprint") at 2.

limited. For example, WilTel concurs with Sprint's comment that the domestic and international MTS markets are fundamentally different and that separation of these services in the price caps process is appropriate.<sup>11</sup> Due to the necessity of obtaining bilateral international agreements with foreign PTTs, an accounting rate system that favors the incumbent AT&T, and high entry costs, international calling is not yet subject to the same level of competition prevailing in the market for domestic MTS services. Similar market imperfections exist in the 800 market,<sup>12</sup> the Alternative Operator Services market and the payphone market.<sup>13</sup>

The disparity in the level of competition among market segments is apparent in AT&T's pass-through of access charge cost reductions to customers. As noted in the Markey Report,<sup>14</sup> AT&T utilized access rate reductions under price caps to give disproportionately large price reductions to business customers, a market in which AT&T faces the most competition, as compared with the reductions it gave to residential customers.

#### **IV. THE RATIONALE FOR DIMINISHED OVERSIGHT OF AT&T UNDER PRICE CAPS DOES NOT APPLY TO THE LEC ACCESS MARKET**

As noted previously, price caps provide no mechanism for

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<sup>11</sup>Sprint at 7-9.

<sup>12</sup>Id. at 9-10.

<sup>13</sup>Id. at 7-8.

<sup>14</sup>See Letter and Report dated March 15, 1991, from Representative Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance to the Honorable Alfred C. Sikes, Chairman, Federal Communications Commission, Report at 1.

limiting price discrimination. Currently, access charges represent the largest single cost of operating an interexchange network. IXCs, including WilTel, incur at least 30% of their costs purchasing service from LECs for connections between their networks and end users. Thus, a system of discriminatory access charges under which competitive IXCs pay rates in excess of those charged to AT&T would endanger the viability of competition in the interexchange market. This is a real danger given AT&T's monopsonistic position as the purchaser of sixty-five percent of access services.<sup>15</sup>

These concerns are vital given the LECs' position as the sole purveyors of interexchange access services in nearly all markets. Although much has been made of the potential for access competition in the future,<sup>16</sup> competition and its resulting benefits remain a distant goal. Competitive access providers (CAPs) do not serve all major markets, they provide a narrow spectrum of services which are generally not aimed at the IXC market, and they do not necessarily engage in meaningful price competition with the LECs. At this time no CAP provides switched access or tandem services, nor will they in the future unless the Commission orders the LECs to unbundle tandem signalling. Furthermore, technological problems and the

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<sup>15</sup>See Petition for Reconsideration of WilTel, Inc., filed September 21, 1992 in CC Docket Nos. 89-79 and 87-313, at 5-13 (requesting improved checks on discrimination in the context of new LEC services).

<sup>16</sup>See Supplemental Notice of Proposed Rulemaking, CC Docket No. 91-141, Comments of Williams Telecommunications Group, Inc., filed November 5, 1991.

lack of service unbundling render meaningful access resale impossible at this time.

The absence of competition in the access market is further evidenced by the pricing behavior of LECs under price caps. MCI's comments indicate that virtually all LECs priced their services at, or very near, the cap.<sup>17</sup> Thus, competition, real or imagined, has not constrained prices in the access market.<sup>18</sup> Without such competition, the LECs have no incentive to improve service or lower rates below their maximum allowable amount.

## V. CONCLUSION

As shown above, competitive entry has been the primary source of improvement in the interexchange market since divestiture. However, price caps must now evolve to reflect the disparate levels of competition emerging in different IXC market segments. At least in terms of pricing flexibility, price caps have resulted in a near de facto deregulation of AT&T. This is problematic in key areas where AT&T still has the ability to exploit its dominant status.

Regardless of how the debate over the proper level of regulation for AT&T is concluded, diminished oversight in the LEC access market is certainly inappropriate. If anything, its reduced regulation of the interexchange market should allow the FCC to redirect its efforts toward more effective regulation of access services.

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<sup>17</sup>The sole exception being a single GTE study area.

<sup>18</sup>MCI at 7, n. 11.

WHEREFORE, WilTel respectfully submits its Reply Comments In  
the Matter of Price Cap Performance Review for AT&T.

WILTEL, INC.

October 6, 1992

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**CERTIFICATE OF SERVICE**

I, Diana Neiman, hereby certify that on October 6, 1992, a copy of the foregoing **Reply Comments of WilTel, Inc.** were sent by first class mail, postage prepaid, to the following:

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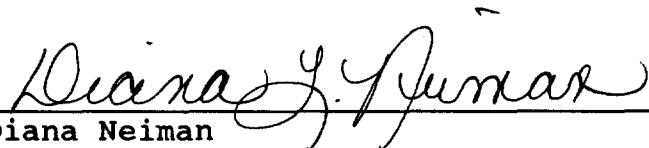
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